

Nos. 16-56057 & 16-56287

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MICHAEL SKIDMORE,
AS TRUSTEE FOR THE RANDY CRAIG WOLFE TRUST
PLAINTIFF, APPELLANT AND APPELLEE

vs.

LED ZEPPELIN, *ET AL.*
DEFENDANTS AND APPELLEES
AND
WARNER/CHAPPELL MUSIC, INC.,
DEFENDANT, APPELLEE AND APPELLANT

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HON. R. GARY KLAUSNER, DISTRICT JUDGE, CASE NO.15-cv-03462 RGK (AGR_x)

SUPPLEMENTAL EXCERPTS OF RECORD – VOL. 3

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL SKIDMORE, <i>etc.</i>,	)	Case No. 2:15-cv-03462 RGK (AGRx)
)	
Plaintiff,)	
	)	DEFENDANTS' TRIAL BRIEF
vs.)	
)	
LED ZEPPELIN, <i>et al.</i>,	)	Date: June 14, 2016
	)	Time: 9:00 a.m.
Defendants.)	
)	
)	Courtroom of the Honorable
)	R. Gary Klausner
)	United States District Judge

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c. Skidmore's Experts Are Properly Excluded as to Performance Elements Supposedly Proving Access

As discussed above, Skidmore previously argued unsuccessfully that claimed similarities in the *Taurus* and *Stairway to Heaven* recordings are proof of access. *See, above* 5-6. Even if this argument is considered again, plaintiff's experts fail to support with objective, scientific and reliable analysis their bare assertions that the claimed performance similarities are proof of access. Instead, their assertions are the music equivalent of junk science.

Stewart asserts that the claimed presence of double-time guitar fingerpicking in two recorded live performances of *Taurus* and in *Stairway to Heaven* is proof that the authors of the latter must have had access to the former. Exh. 1 at 21. However, he did no research to determine the extent to which double-time guitar fingerpicking appeared in recorded performances before *Taurus* and he admitted it was common. Stewart Depo. (Exh. 5) at 200:13 to 201:20. He also asserts that the tempo and instrumentation of *Taurus* recordings are similar to *Stairway to Heaven*. Exh. 1 at 22-23. But, he did no research as to whether similar tempo was unique or prevalent before *Taurus* and admitted that the tempo was commonplace before *Taurus*. Stewart Depo. (Exh. 5) at 205:12-15, 207:15 to 208:1. And, while claiming that similar instrumentation in the recordings is proof of access, he testified that the instrumentation in the *Taurus* and *Stairway to Heaven* recordings is different, with the *Taurus* recording using harpsichord, flute and strings, and *Stairway to Heaven* having no harpsichord and no strings, and recorders. Stewart Depo. (Exh. 5) at 208:3-8, 208:24 to 209:1.

For his part, Johnson claims similarity in the recordings' tempo and mood proves access. Exh. 2 at 13-14. But, like Stewart, he did no research and admits that the tempo was common before *Taurus*. Johnson Depo. (Exh. 6) at 173:4-16. In addition, he cannot objectively define "mood" or explain what he means, and did no research to determine the extent to which other works before *Taurus* had a similar

1 mood. *Id.* at 173:17 to 174:12 (“I suppose it’s subjective”); *Swirsky*, 376 F.3d at 845
2 (extrinsic test considers similarity “as measured by external, objective criteria”).

3 Hanson asserts in his report that in the recordings of *Taurus* and *Stairway to*
4 *Heaven* the guitar is “played at a nearly identical position on the guitar fretboard” and
5 “begin on the same strings in the same position with the same fingerings.” Exh. 3 at
6 4. But, Hanson testified that since a child he played it the same way and, in the
7 nature of a guitar, it is the easiest way to play it. Hanson Depo. (Exh. 7) at 56:5-24.

8 Bricklin claims that recordings of both *Taurus* and *Stairway to Heaven*
9 employ reverb. Exh. 4. Aside from the fact he is incorrect, he offers no research or
10 analysis as to the extent of the use of reverb prior to *Taurus* and, indeed, Stewart
11 admits it was commonplace. Stewart Depo. (Exh. 5) at 193:23 to 194:13.

12 A putative expert’s assertions, unsupported by objective analysis and research
13 are not relevant and certainly not reliable. *Daubert*, 43 F.3d at 1319 (“We’ve been
14 presented with only the experts’ qualifications, their conclusions and their
15 assurances of reliability. Under *Daubert*, that’s not enough.”); *Nebraska Plastics*,
16 408 F.3d at 416 (“if the expert’s opinion is so fundamentally unsupported that it can
17 offer no assistance to the jury, it must be excluded”).

18 The scrutiny properly accorded these assertions as to non-protectable elements
19 being proof of copying is heightened by the fact that they are not the result of any
20 research before litigation, but rather are provided solely for the purpose of trying to
21 create a ground to avoid the Court’s ruling in this case that the jury will only hear
22 the *Taurus* deposit copy. *Daubert*, 43 F.3d at 1317 (it is a “significant fact” that
23 experts “developed their opinions expressly for purposes of testifying” rather than
24 “naturally and directly out of research they have conducted independent of the
25 litigation”). Here, “none of the experts based his testimony on preexisting or
26 independent research.” *Id.*

27 Even if there were some relevance to these putative experts’ assertions as to
28 the admittedly-unprotected *Taurus* sound recordings, any probative value is far

1 outweighed by the confusion and prejudice that will result if the Court allows their
2 testimony and use of the *Taurus* sound recordings. Accordingly, their testimony
3 also is properly excluded under Federal Rule of Evidence 403.

4 Plaintiff's attempt to use conclusory, unscientific and unreliable "expert"
5 assertions to reinsert the *Taurus* recordings into this case and confuse the jury,
6 should be rejected and the new expert reports and testimony excluded.

7 **d. Skidmore's "Mash-Ups" are Irrelevant, Misleading**
8 **and Properly Excluded**

9 Plaintiff's recreated recordings of the *Taurus* recording and *Stairway to*
10 *Heaven* in its entirety, as well as plaintiff's recordings superimposing the *Taurus*
11 recording over *Stairway to Heaven* – so-called "mash-ups" – are within the Court's
12 prior rulings and properly excluded. Plaintiff now also offers new recordings that
13 purport to superimpose performances of the *Taurus* deposit copy, *Stairway to*
14 *Heaven* and in some instances the *Taurus* recordings over each other, so that they
15 are heard simultaneously. These new mash-ups also are properly excluded.

16 Under both the extrinsic and intrinsic test, the comparison is between the
17 plaintiff's work and the defendant's work. Plaintiff's mash-ups of *Taurus* and
18 *Stairway to Heaven* are neither composition. Instead, the mash-ups are new works
19 created by plaintiff, including by manipulating them digitally to, *e.g.*, match their
20 tempo. Further, completely different songs can be "mashed" to create a recording
21 that suggests similarity where none exists.⁷ Mash-ups are a parlor trick, are not a
22 generally accepted forensic musicological practice and their use has been criticized.

23
24 ⁷ See, *e.g.*:

25 <https://www.youtube.com/watch?v=rH5Qr-fq1IY> (Elvis Presley's *Burning Love* and
26 Van Halen's *Jump*);

27 <https://www.youtube.com/watch?v=D3YhCvARXSA> (The Beatles' *Let It Be* and
28 Bob Marley's *No Woman, No Cry*); and

<https://www.youtube.com/watch?v=U13xOvDa19U> (The Bee Gees' *Stayin' Alive*
and Pink Floyd's *Another Brick In The Wall Pt. II*).

1 See, e.g., D. Begault, H. Heisse & C. Peltier, *Forensic Musicology – An Overview* at
2 3 (“perceived similarity results as a result of the *technique*, and not the *inherent*
3 *similarity* between the two music examples in question” (emphasis in original),
4 Anderson Decl. at 2, ¶ 11, Exh. 8); *Cottrill v. Spears*, No. CIV.A. 02-3646, 2003
5 WL 21223846, at *9 (E.D. Pa. May 22, 2003), *aff’d*, 87 F. App’x 803 (3d Cir. 2004)
6 (rejecting plaintiff’s mash-ups; “it is clear to the Court that the comparison offered
7 by Plaintiffs’ CD is unhelpful under the extrinsic test and only further demonstrates
8 the necessity to dissect the works in question in order to discern the protectible
9 similarities from the similarities common to songs of this particular genre”).

10 Plaintiff’s mash-ups are properly excluded.

11 **ii. Defendants’ Motion in Limine No. 10: Witnesses**

12 ***Skidmore Failed to Disclose Pursuant to FRCP 26***

13 The Court has taken under consideration defendants’ Motion in Limine No. 10
14 for an order precluding plaintiff from calling, other than for impeachment, witnesses
15 that he did not timely disclose pursuant to Federal Rule of Civil Procedure 26.⁸
16 Since then, plaintiff has submitted his witness list with another witness he never
17 disclosed: Penny A. Castle, Universal Music Group.

18 In addition, plaintiff has issued trial subpoenas for others he never disclosed
19 and has improperly directed to corporate entities – such as various Universal entities
20 and Rondor Music International – that he also never disclosed. His trial subpoenas

21 ///

22 ///

23 ⁸ While Rule 26(a)(1)(A)-(B) excludes witnesses and documents to be used
24 “solely for impeachment,” impeachment witnesses and documents must be disclosed
25 in response to discovery. For example, defendants’ discovery sought plaintiff’s
26 production of all newspapers, articles, interviews, recordings and other documents
27 purporting to quote Led Zeppelin’s band members as to, e.g., *Taurus*, *Spirit* or
28 *Stairway to Heaven*. Defs’ RFP Nos. 44-47. To the extent plaintiff failed to
produce any such documents, he is precluded from using them even as
impeachment. Fed. R. Civ. P. 37(c)(1).

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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

MICHAEL SKIDMORE, <i>etc.</i>,	)	Case No. 2:15-cv-03462 RGK (AGRx)
)	
Plaintiff,)	
	)	DECLARATION <i>RE</i> DOCUMENTS
vs.	)	CITED IN DEFENDANTS' TRIAL
	)	BRIEF
LED ZEPPELIN, <i>et al.</i> ,)	
)	
Defendants.	)	Date: June 14, 2016
	)	Time: 9:00 a.m.

Courtroom of the Honorable
 R. Gary Klausner
 United States District Judge

DECLARATION OF PETER J. ANDERSON

I, Peter J. Anderson, declare and state:

1. I am an attorney admitted to practice before this Court and all Courts of the State of California. I have personal knowledge of the following facts and could competently testify to these facts if called upon to do so.

2. I represent defendants James Patrick Page, Robert Plant, Warner/Chappell Music, Inc., Atlantic Recording Corp. and Rhino Entertainment Company in this action. This Declaration is submitted to provide recent documents cited in defendants' Trial Brief.

3. Attached to this Declaration as Exhibit 1 is a true and correct copy of Dr. Alexander Stewart's new report provided by plaintiff on May 2, 2016.

4. Attached to this Declaration as Exhibit 2 is a true and correct copy of Erik Johnson's new report provided by plaintiff on May 2, 2016.

5. Attached to this Declaration as Exhibit 3 is a true and correct copy of Kevin Hanson's new report provided by plaintiff on May 2, 2016.

6. Attached to this Declaration as Exhibit 4 is a true and correct copy of Brian Bricklin's new report provided by plaintiff on May 2, 2016.

7. On May 17, 2016, I took the deposition of Dr. Alexander Stewart. As of the filing of defendants' Trial Brief, I have not received any changes or corrections to the transcript of his deposition. Attached to this Declaration as Exhibit 5 are true and correct copies of pages from the transcript of his deposition and which contain the testimony cited in defendants' Trial Brief. Exhibit 2058 referenced at page 142 of his transcript is the 1967 *Taurus* deposit copy.

8. On May 18, 2016, I took the deposition of Erik Johnson. As of the filing of defendants' Trial Brief, I have not received any changes or corrections to the transcript of his deposition. Attached to this Declaration as Exhibit 6 are true and correct copies of pages from the transcript of his deposition and which contain the testimony cited in defendants' Trial Brief.

6 10. The deposition of Brian Bricklin was noticed and a subpoena issued for
7 May 18, 2016, but that morning plaintiff's counsel told me that Mr. Bricklin had
8 been hospitalized and could not appear for his deposition.

9 11. Attached to this Declaration as Exhibit 8 is a true and correct copy of D.
10 Begault, H. Heisse & C. Peltier, *Forensic Musicology – An Overview*, cited in
11 defendants’ Trial Brief.

12 I declare under penalty of perjury that the foregoing is true and correct.
13 Executed on June 7, 2016.

14

15 /s/ Peter J. Anderson

16 **PETER J. ANDERSON**

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL SKIDMORE, etc.,)
 Plaintiff,)
) CIVIL ACTION NO.
) 2:15-cv-03462 RGK (AGRx)
)
V.)
)
LED ZEPPELIN, et al.,)
 Defendants.)

VIDEOTAPED DEPOSITION
- of -
ALEXANDER STEWART, Ph.D.

taken on behalf of the Defendants on Tuesday,
May 17, 2016, at the offices of Court Reporters
Associates, 148 College Street, 2nd Floor,
Burlington, Vermont, commencing at 9:14 AM.

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VIDEO TECHNICIAN: MARY DOUD

COURT REPORTER: JOHANNA MASSÉ, RMR, CRR

09:16:19 1 MR. MALOFIY: All right.

09:16:20 2 MR. ANDERSON: Just normal, like what we
09:16:22 3 always do, what we've done in every deposition.

09:16:23 4 MR. MALOFIY: We usually say objections to
09:16:25 5 form are reserved.

09:16:25 6 MR. ANDERSON: No, we've never in this case.

09:16:27 7 MR. MALOFIY: Oh, all right. I will agree to
09:16:29 8 disagree, but go ahead.

09:16:30 9 THE VIDEOGRAPHER: The court reporter will now
09:16:31 10 swear in the witness, please.

09:16:31 11 ALEXANDER STEWART, Ph.D.,
09:16:31 12 having been first duly sworn, testified as follows:

09:16:42 13 EXAMINATION

09:16:42 14 BY MR. ANDERSON:

09:16:42 15 Q. Good morning, Dr. Stewart. My name, again, is
09:16:44 16 Peter Anderson, and I represent the remaining
09:16:47 17 defendants in this action.

09:16:50 18 You've had your deposition taken before?

09:16:51 19 A. Yes.

09:16:52 20 Q. On how many occasions?

09:16:55 21 A. Just an estimate, maybe half dozen, maybe
09:16:59 22 eight.

09:17:02 23 Q. When was the last time you had a deposition?

09:17:05 24 A. It was right here about -- you know, I don't
09:17:15 25 remember the date. Six months ago, maybe, or -- within

14:21:19 1 Q. Is that a result of the instrumentation?

14:21:21 2 MR. MALOFIY: If you need to refer to your
14:21:22 3 report and take a minute, please do so.

14:21:24 4 THE WITNESS: Um-hum.

14:21:25 5 A. That is related to instrumentation, yes.

14:21:26 6 Q. Okay. So anything else other than things that
14:21:33 7 are related to those three items that I've identified?

14:21:35 8 A. Could you name them again?

14:21:37 9 Q. Double-time finger picking, tempo, and
14:21:40 10 instrumentation.

14:21:41 11 A. All right. Well, you keep saying you're going
14:21:49 12 to come back to the details, but it's the details that
14:21:51 13 are really significant.

14:21:52 14 Q. Trust me, I'm going to come back to the
14:21:54 15 details.

14:21:55 16 A. All right.

14:21:55 17 Q. Just trying to parse this out.

14:21:56 18 A. I think that that's it, but there might be --
14:21:59 19 if I take the time to read all through this, I might
14:22:02 20 find that I also mention something else, but let's --
14:22:03 21 can we just assume that you're correct and proceed to
14:22:05 22 the details?

14:22:06 23 Q. Thank you, sir. Is there reverb in any of the
14:22:10 24 recordings of Taurus?

14:22:14 25 A. I believe so.

14:22:16 1 Q. Do you think reverb is -- is there reverb in
14:22:21 2 Stairway to Heaven?

14:22:21 3 A. Probably. I'm not an engineer, but I'd be
14:22:24 4 surprised if there weren't.

14:22:25 5 Q. Reverb was common in the 1960s and '70s in
14:22:29 6 popular music?

14:22:30 7 A. Or using echo in one way or another.
14:22:32 8 Sometimes they had actual echo chambers in recording
14:22:35 9 studios.

14:22:35 10 Q. Right. So basically you could accomplish it
14:22:40 11 in two different technical ways but the same thing, the
14:22:45 12 sense of depth?

14:22:45 13 A. Yeah.

14:22:47 14 Q. And is it correct that there's nothing in the
14:22:52 15 Taurus -- well, strike that.

14:22:55 16 Double-time finger picking is a performance
14:22:57 17 element that's not depicted in the Taurus deposit copy,
14:23:00 18 correct?

14:23:00 19 A. Correct.

14:23:01 20 Q. And tempo is a performance element that's not
14:23:06 21 depicted in the Taurus deposit copy, right?

14:23:07 22 A. Correct.

14:23:08 23 Q. And instrumentation is a performance element
14:23:12 24 not depicted in the Taurus deposit copy, right?

14:23:14 25 A. That's correct.

14:30:09 1 so then I'm going to say -- okay. Then I'm okay with
14:30:12 2 that clarification.

14:30:13 3 Q. Sir?

14:30:14 4 A. I would have to get back to you with any
14:30:16 5 specific citations of sources, but, yes, I've read this
14:30:20 6 in scholarly works dealing with music copyright.

14:30:25 7 Q. And you can't identify any of them?

14:30:27 8 A. No. Of course not.

14:30:28 9 MR. MALOFIY: Objection.

14:30:28 10 A. There are many dozens of such works that I've
14:30:30 11 read.

14:30:30 12 MR. MALOFIY: Vague and ambiguous.

14:30:35 13 Q. Do you agree that finger picking is -- was a
14:30:37 14 commonplace way of playing acoustic guitar before
14:30:40 15 Taurus?

14:30:40 16 A. Yes.

14:30:43 17 Q. Do you agree that Jimmy Page finger-picked
14:30:49 18 acoustic guitars before Taurus?

14:30:51 19 A. Yes.

14:30:51 20 Q. Did you do any research to determine the
14:30:55 21 extent to which finger picking was commonplace prior to
14:30:59 22 Taurus?

14:30:59 23 A. I don't think I need to. It's --

14:31:03 24 Q. You knew it?

14:31:03 25 A. It was common.

14:31:04 1 Q. Okay. What is double-time?

14:31:05 2 A. Double-time means playing with the rhythmic
14:31:13 3 density twice as fast, so in this case it would be from
14:31:16 4 eighth notes to sixteenth notes.

14:31:19 5 Q. Do you also agree that double-time was
14:31:22 6 commonplace before Taurus?

14:31:23 7 A. Oh, yes.

14:31:23 8 Q. And do you agree that Jimmy Page played
14:31:27 9 double-time finger-style acoustic guitar before Taurus?

14:31:33 10 A. Did he do it in a situation exactly the same
14:31:35 11 like he did here? I don't know.

14:31:38 12 Q. Are you -- do you agree -- setting aside your
14:31:41 13 qualifications, do you agree that Jimmy Page played
14:31:44 14 double-time finger-style acoustic guitar before Taurus?

14:31:47 15 A. Most likely.

14:31:50 16 Q. Did you do any research to determine the
14:31:53 17 extent to which double-time finger style was a
14:31:56 18 commonplace way of playing acoustic guitar before
14:31:59 19 Taurus?

14:31:59 20 A. I don't think it's necessary.

14:32:02 21 Q. And why?

14:32:02 22 A. Because it is common and it's also in the
14:32:05 23 George Harrison case common to use grace notes, but the
14:32:08 24 grace note was in exactly the same place in the melody
14:32:11 25 of My Sweet Lord as in The Chiffons' song. And what

14:35:55 1 they heard that, yeah.

14:35:57 2 Q. Okay. That's --

14:35:58 3 A. The fact that it happens in the same place.

14:36:00 4 MR. ANDERSON: Yeah. Move to strike as
14:36:01 5 nonresponsive.

14:36:02 6 Q. That's fine, sir, but my question to you is,
14:36:04 7 Is it correct that your theory of access by reference
14:36:08 8 to double-time finger picking isn't based on the
14:36:11 9 creators of Stairway to Heaven hearing the studio
14:36:15 10 recording of Taurus?

14:36:17 11 A. Okay. Yes.

14:36:18 12 Q. Thank you. On tempo, do you agree that a
14:36:27 13 tempo of 72 to 73 beats per minute is -- was
14:36:31 14 commonplace in music in the 1960s?

14:36:34 15 A. Throughout musical eternity, really.

14:36:38 16 Q. Do you agree that Jimmy Page performed songs
14:36:45 17 that had 72 to 73 beats per minute before Taurus?

14:36:48 18 A. I don't know, but probably.

14:36:52 19 Q. Did you do any research to determine the
14:36:55 20 extent to which 72 to 73 beats per minute was a
14:36:58 21 commonplace tempo before Taurus?

14:37:00 22 A. Yeah. My -- my conclusions are not based on
14:37:04 23 the prevalence of this. It's based on the fact that
14:37:09 24 you have substantial musical similarity, most of which
14:37:11 25 we have not even discussed today, and then you have

14:38:26 1 MR. ANDERSON: He's not answering the
14:38:27 2 question.

14:38:27 3 MR. MALOFIY: He did, and then he elaborated.

14:38:29 4 MR. ANDERSON: All right. Fine.

14:38:30 5 Q. Go ahead.

14:38:30 6 MR. MALOFIY: Hold on a second. I have to
14:38:31 7 protect the record. You asked him two times. He
14:38:33 8 answered fully. You want a yes or no. He can't answer
14:38:36 9 with a yes or no. He elaborated on it. There's
14:38:38 10 nothing wrong or improper there. It's been asked and
14:38:41 11 answered. I have my objection. If you want to ask him
14:38:42 12 the same question again and waste time, that's fine.
14:38:44 13 Ask him the same question again; you'll get the same
14:38:46 14 answer.

14:38:47 15 Q. Sir, can you answer the question, please? Did
14:38:48 16 you do any research to determine the extent to which 72
14:38:51 17 to 73 beats per minute was a commonplace tempo before
14:38:54 18 Taurus?

14:38:55 19 MR. MALOFIY: Objection. Asked and answered
14:38:56 20 now for the third time.

14:38:57 21 A. This research would be ridiculous and un- --
14:39:00 22 irrelevant and unnecessary, and so no, I did not do it.

14:39:03 23 Q. And it would be ridiculous because beat --
14:39:08 24 works with tempos of 72 to 73 beats per minute were
14:39:11 25 commonplace before Taurus, right?

14:39:14 1 A. Of course.

14:39:15 2 MR. MALOFIY: Objection. Asked and answered.

14:39:16 3 Q. Thank you. And your opinion as to the
14:39:22 4 similarity of instrumentation notes the presence of a
14:39:25 5 harpsichord, flute, strings, and acoustic guitar in
14:39:28 6 Taurus recordings and acoustic guitar and recorder in
14:39:33 7 Stairway to Heaven, correct?

14:39:33 8 A. Sounds right.

14:39:34 9 Q. And it's correct that there's no harpsichord
14:39:37 10 or flute in Stairway to Heaven?

14:39:39 11 A. There's recorder, which is a type of flute.

14:39:42 12 Q. Is a recorder a type of flute?

14:39:43 13 A. Yes. It's an end-blown flute.

14:39:47 14 Q. Do they have a different sound?

14:39:48 15 A. Somewhat.

14:39:51 16 Q. What's the difference?

14:39:56 17 A. Well, they're -- since they're made of wood,
14:39:58 18 they have somewhat of a more woody timbre, but then
14:40:02 19 flutes sometimes are made -- side-blown flutes are
14:40:04 20 sometimes made of wood also.

14:40:06 21 Q. Is there a wood flute performed in recordings
14:40:09 22 of Taurus, to your knowledge?

14:40:10 23 A. Not to my knowledge.

14:40:12 24 Q. Is it correct there's no harpsichord in
14:40:15 25 Stairway to Heaven?

14:40:16 1 A. I believe not, no.

14:40:22 2 Q. And I believe you referred to a quasi
14:40:25 3 classical tone; am I correct?

14:40:27 4 A. Yes.

14:40:28 5 Q. What did you mean by "quasi classical"?

14:40:30 6 A. I mean that these are instruments that are
14:40:32 7 strongly suggestive of classical music, particularly
14:40:36 8 from the Baroque or Renaissance era.

14:40:39 9 Q. In 1960s popular music, were harpsichords
14:40:42 10 used?

14:40:43 11 A. Occasionally.

14:40:44 12 Q. What about flutes, strings, and acoustic
14:40:48 13 guitars?

14:40:48 14 MR. MALOFIY: Objection. Compound.

14:40:49 15 If you need to, break it up.

14:40:50 16 A. Occasionally. But the point here is that
14:40:53 17 these instruments evoked this style that is shared by
14:41:02 18 both of these works.

14:41:03 19 Q. Did you do any research to determine the
14:41:05 20 extent to which songs prior to Taurus had, as you refer
14:41:09 21 to it, a quasi classical feel?

14:41:10 22 A. It would not be necessary to make the point
14:41:12 23 I'm making about a probative similarity.

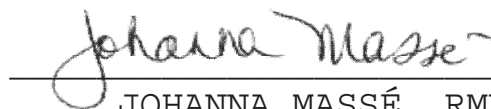
14:41:15 24 Q. Okay.

14:41:15 25 A. I mean, when you have --

C E R T I F I C A T E

I, Johanna Massé, Court Reporter and Notary Public, do hereby certify that the foregoing pages, numbered 4 through 362, inclusive, are a true and accurate transcription of my stenographic notes of the Deposition of Alexander Stewart, Ph.D., who was first duly sworn by me, taken before me on Tuesday, May 17, 2016, commencing at 9:14 AM, in the matter of Michael Skidmore, etc. v. Led Zeppelin, et al., Civil Action No. 2:15-cv-03462 RGK (AGRx), as to which a transcript was duly ordered.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this transcript was produced, and further that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.



JOHANNA MASSÉ, RMR, CRR
Comm. expires: 2/10/19



EXHIBIT 6

ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4
5 MICHAEL SKIDMORE, etc. : CIVIL ACTION

6 : NO. 2:15-cv-03462
7 : RGK (AGRx)

8 V. :

9 :

10 LED ZEPPELIN, et al. :

11
12
13 - - -

14 Videotaped Deposition of ERIK JOHNSON,
15 taken pursuant to notice, at the offices of
16 Esquire Deposition Solutions, 1835 Market
17 Street, Suite 2600, Philadelphia,
18 Pennsylvania, commencing at approximately
19 9:45 a.m., on May 18, 2016, before Michelle
20 Palamarchuk, RPR, RMR and Notary Public in
21 and for the Commonwealth of Pennsylvania.

22 - - -

23 ESQUIRE DEPOSITION SOLUTIONS
24 1835 Market Street, Suite 2600
Philadelphia, Pennsylvania 19103
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EXHIBIT 6

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ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016
16

1 you to ask for a read and sign just
2 to confirm on the record that you
3 want to read and sign, read the
4 transcript and sign the transcript
5 before it's final.

6 THE WITNESS: Oh, okay.

7 MR. MALOFIY: Do you want to
8 state that?

9 THE WITNESS: I would like to
10 read and sign the transcript before
11 it's submitted.

12 MR. ANDERSON: I don't know what
13 the "submitted" means, but you do
14 have the right to elect to read and
15 sign the transcript, so that's been
16 noted on the record.

17 BY MR. ANDERSON:

18 Q. Have you ever testified at a trial?

19 A. I have not.

20 Q. Have you ever testified in an
21 arbitration?

22 A. I have not.

23 Q. Have you ever been designated as an
24 expert witness in any case other than in this



ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016
17

1 case?

2 A. Not before this case.

3 Q. Have you ever been -- have you been
4 designated as an expert witness after you
5 were designated in this case?

6 A. I have not.

7 Q. Are you producing any documents in
8 response to the subpoena directed to you?

9 A. I am not.

10 Q. Have you seen the subpoena before?

11 A. Yes, I have.

12 Q. When?

13 A. About a week ago, approximately,
14 within the last week.

15 MR. ANDERSON: Do you remember
16 the last exhibit number yesterday?
17 Was it 2203?

18 MR. MALOFIY: I can
19 double-check. I'm not sure.

20 MR. ANDERSON: Why don't we go
21 with 2220?

22 MR. MALOFIY: No. We had 22.
23 Remember?

24 MR. ANDERSON: Oh, she went to



ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

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1 Q. Is there a tempo indicated on the
2 Taurus deposit copy?

3 A. No, there is not.

4 Q. Did you do any research to determine
5 whether musical compositions prior to Taurus
6 had the same or similar tempos to the tempos
7 that you've ascribed to Taurus and the tempo
8 of Stairway to Heaven?

9 A. Specifically, no.

10 Q. Do you agree that there are musical
11 compositions prior to Taurus that had similar
12 tempos?

13 A. I'm quite sure. I mean, to be fair,
14 there are compositions at many tempos, many
15 of which have the same tempo but they often
16 have very little else in common.

17 Q. You identified mood. What did you
18 mean by mood?

19 A. I suppose it's subjective. I guess
20 what I mean is because of the flavors of the
21 acoustic guitar performed the way it is in
22 both compositions and the other ancillary
23 instruments, the way that they coalesce as a
24 whole gives a certain, I guess it has a

ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

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1 pseudo-renaissance kind of flavor to it. Of
2 course, I mean that colloquially.

3 But there's just a certain kind of
4 mood and tone that emerges from it. And even
5 if I can't identify exactly what that mood
6 is, I know that they're both the same mood,
7 in my estimation.

8 Q. Did you do any research to determine
9 the extent to which compositions prior to,
10 and recordings prior to Taurus had a similar
11 mood?

12 A. No, I did not.

13 Q. Are you aware of any compositions
14 prior to Taurus that had a similar mood?

15 A. Off the top of my head, no.

16 Q. Would you say that Ruby Tuesday has a
17 similar mood?

18 A. Not in my estimation.

19 Q. Would you say that -- just a second.
20 Do you know the Beach Boys song God Only
21 Knows?

22 A. Yes, I do.

23 Q. Do you believe that has a similar
24 pseudo-renaissance feel?

ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

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1 just like their music. I always
2 have. Why? I'm not sure. I always
3 liked Led Zeppelin.

4 BY MR. ANDERSON:

5 Q. What is it about their music that you
6 admire?

7 A. The musicianship, riff writing, I
8 like the way the albums sound.

9 Q. Have you finished your answer?

10 A. Yes.

11 Q. Okay. Sorry. I didn't know. I
12 didn't want to cut you off.

13 When you say "the way the album
14 sounds," you're talking about the production
15 values?

16 A. Yes, that's correct.

17 Q. And is it correct that there are no
18 instruments indicated on the Taurus deposit
19 copy?

20 A. Yes, that's correct.

21 Q. In that same paragraph you refer to
22 revelations of their unauthorized borrowing.

23 And, again, I'm not instructing you.
24 But just out of caution, I'm cautioning you



EXHIBIT 6

ERIK JOHNSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016
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C E R T I F I C A T I O N

- - -

I, Michelle Palamarchuk, Registered
Professional Reporter and Notary Public, do
hereby certify that the foregoing transcript
is a true and accurate transcription of the
deposition proceedings, that the witness was
first sworn by me at the time, place and on
the date hereinbefore set forth.



Michelle Palamarchuk, RPR, RMR

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EXHIBIT 7

KEVIN HANSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016

1

1
2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE CENTRAL DISTRICT OF CALIFORNIA

4 - - -

5
6 MICHAEL SKIDMORE, etc. : CIVIL ACTION

7 : NO. 2:15-cv-03462
8 : RGK (AGRx)

9 V. :

10 :
11 LED ZEPPELIN, et al. :

12
13 - - -

14 Videotaped Deposition of KEVIN HANSON,
15 taken pursuant to notice, at the offices of
16 Esquire Deposition Solutions, 1835 Market
17 Street, Suite 2600, Philadelphia,
18 Pennsylvania, commencing at approximately
19 3:20 p.m., on May 18, 2016, before Michelle
20 Palamarchuk, RPR, RMR and Notary Public in
21 and for the Commonwealth of Pennsylvania.

22 - - -

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KEVIN HANSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016
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1 musicological terms, if you can describe it
2 from a theoretical standpoint, from a
3 standpoint of how it ends up sounding, the
4 overall feel of it.

5 Q. Have you ever played Stairway to
6 Heaven before becoming involved in this case?

7 A. Oh, yes, since I was 11 years old.

8 Q. At any point did you ever play it
9 with the same fingering that you believe
10 Jimmy Page used?

11 A. I think we play the same -- I think I
12 play it like Jimmy Page plays it. I'm almost
13 certain.

14 Q. And that's the same fingering that
15 you believe Randy California played?

16 A. Yes; on the right hand in terms of
17 the notes that are similar that occur at the
18 same time.

19 Q. Are there features, elements, or
20 characteristics of a guitar that lend itself
21 to playing those notes with that fingering?

22 A. Yes, there are. It would probably be
23 the easiest place to play those, to play
24 those two wrists separately.

KEVIN HANSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016
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1 in Stairway to Heaven?

2 A. Yes.

3 Q. Is there a descending chromatic line
4 in the Taurus deposit copy?

5 A. Yes, there is.

6 Q. Is there a minor line cliché in both
7 of the compositions?

8 A. I would hesitate to use that term,
9 especially in Taurus because, because of the
10 way that it's broken up -- well, let me
11 correct that.

12 In the, if you were to break up
13 Taurus, the guitar part, into treble and bass
14 clef, yes, you would have the descending
15 chromatic line.

16 Q. Does the Taurus deposit copy indicate
17 or identify any instruments to play the
18 composition?

19 A. It does not.

20 Q. Does it indicate tempo?

21 A. No, it doesn't.

22 Q. Does it indicate melody?

23 A. Yes --

24 Q. Does it --



KEVIN HANSON
SKIDMORE vs. LED ZEPPELIN

May 18, 2016
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C E R T I F I C A T I O N

- - -

I, Michelle Palamarchuk, Registered
Professional Reporter and Notary Public, do
hereby certify that the foregoing transcript
is a true and accurate transcription of the
deposition proceedings, that the witness was
first sworn by me at the time, place and on
the date hereinbefore set forth.



Michelle Palamarchuk, RPR, RMR

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Tab 18

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ATLANTIC RECORDING CORP., RHINO
ENTERTAINMENT COMPANY and WARNER
MUSIC GROUP CORP.

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PLANT and JOHN PAUL JONES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL SKIDMORE, <i>etc.</i>,	)	Case No. 2:15-cv-03462 RGK (AGRx)
)	
Plaintiff,)	
)	
vs.	)	DEFENDANTS' REPLY IN
	)	SUPPORT OF MOTION <i>IN LIMINE</i>
LED ZEPPELIN, <i>et al.</i>,	)	NO. 8 TO EXCLUDE EVIDENCE
	)	AND ARGUMENT AS TO
Defendants.	)	TRUST'S USE OF FUNDS
)	
)	
	)	Date: May 10, 2016
	)	Time: 9:00 a.m.

Courtroom of the Honorable
R. Gary Klausner
United States District Judge

1 **REPLY MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff acknowledges that he successfully prevented defendants from doing
3 discovery as to his allegations that he and the Trust use the Trust's funds to "buy
4 children in need musical instruments" and will use any recovery in this action for
5 that purpose. FAC (Doc. 31) at 4 n. 1 & at 12, ¶ 63. Surprisingly, plaintiff contends
6 that because he blocked that discovery, he can now put on evidence within that
7 discovery. But he cannot have it both ways. Defs' Mtn. *in Limine* No. 8 (Doc. 181)
8 at 3-5.

9 In response to defendants' additional argument that the use of Trust funds also
10 is not relevant, plaintiff refers to "some public criticism" of plaintiff's motives.
11 Pltf's Oppn. (Doc. 168) at 2. Not only is that unproven, public comments are not the
12 touchstone for what is relevant on plaintiff's claims.

13 Plaintiff also argues that the use of Trust funds is relevant to defendants'
14 defenses of waiver, abandonment and license. Pltf's Oppn. at 2-3. It is not clear,
15 and plaintiff does not explain, how the use of Trust funds is relevant to those
16 defenses, but that is moot because defendants are not pursuing those defenses at
17 trial.

18 And, even if the evidence were relevant, evidence and argument that the Trust
19 uses its funds to buy musical instruments for needy children and will use any
20 recovery awarded by the jury for that purpose, is unduly prejudicial and properly
21 excluded under Federal Rule of Evidence 403. Defs' Mtn. *in Limine* No. 8 at 6.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Accordingly, evidence and argument as to plaintiff's and the Trust's use of
2 funds is properly excluded.

3 Dated: April 21, 2016

4 /s/ Peter J. Anderson
5 Peter J. Anderson, Esq.
6 LAW OFFICES OF PETER J. ANDERSON
7 A Professional Corporation
8 Attorney for Defendants
9 JAMES PATRICK PAGE, ROBERT
10 ANTHONY PLANT, JOHN PAUL JONES,
11 WARNER/CHAPPELL MUSIC, INC.,
12 SUPER HYPE PUBLISHING, INC.,
13 ATLANTIC RECORDING CORP., RHINO
14 ENTERTAINMENT COMPANY and
15 WARNER MUSIC GROUP CORP.

16
17 Helene M. Freeman, Esq.
18 PHILLIPS NIZER LLP
19 Attorney for Defendants
20 JAMES PATRICK PAGE,
21 ROBERT ANTHONY PLANT and
22 JOHN PAUL JONES
23
24
25
26
27
28

Tab 19

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Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MICHAEL SKIDMORE, as Trustee for
the RANDY CRAIG WOLFE TRUST,

Plaintiff,

v.

LED ZEPPELIN; JAMES PATRICK
PAGE; ROBERT ANTHONY PLANT;
JOHN PAUL JONES; SUPER HYPE
PUBLISHING, INC.; WARNER MUSIC
GROUP CORP., Parent of
WARNER/CHAPPELL MUSIC, INC.;
ATLANTIC RECORDING
CORPORATION; RHINO
ENTERTAINMENT COMPANY,

Defendants.

Case No. 15-cv-03462 RGK (AGRx)

Hon. R. Gary Klausner

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION IN
LIMINE NO. 8 TO EXCLUDE
EVIDENCE AND ARGUMENT AS
TO TRUST'S USE OF FUNDS**

Trial: April 25, 2016
Time: 9:00 a.m.
Courtroom: 850
Pretrial Conf: May 10, 2016

1 Given the inescapable conclusion that Defendants Jimmy Page and Robert Plant
2 copied *Taurus* in order to compose the first 2 ½ minutes of *Stairway to Heaven*,
3 Defendants spent much of their time in discovery trying to prove that the Plaintiff Trust
4 lacked standing to bring this case. Plaintiff produced voluminous evidence to establish
5 the legality and standing of the Trust, but in their zeal to harass Plaintiff, Defendants kept
6 pressing for more irrelevant information such as, for example, a detailed disclosure of
7 every dime the Trust earned and spent during the years it has been in effect. Plaintiff
8 finally drew a line, and Defendants filed a motion to compel. The Magistrate Judge
9 agreed with Plaintiff and denied the motion. Now, even though the Magistrate Judge
10 ruled that the further information and documentation was wholly irrelevant, Defendants
11 move to exclude relevant evidence in order to circumvent the Magistrate Judge's ruling
12 and punish Plaintiff for exercising his right to refuse to answer capricious, burdensome
13 and overbroad discovery requests.

14 The Randy Craig Wolfe Trust ("Trust") was established by court order on
15 February 19, 2002. The Trust owns 100% of the interests in Randy Wolfe's ("Randy")
16 intellectual property. The sole beneficiary of the Trust is the Ventura County School
17 District for the purpose of buying children in need musical instruments. Although
18 Plaintiff has provided Defendants with the 2012 court order establishing the Trust,
19 Defendants have doubted the validity of the Trust from the outset of this case.

20 To prove their unfounded suspicions, Defendants harassed Plaintiffs with
21 overbroad and burdensome discovery requests. Plaintiff exercised his rights and refused
22 to respond. Ultimately, the Magistrate Judge agreed with Plaintiff and held Defendants'
23 discovery requests were "overbroad" and "[dis]proportional to the needs of the case."
24 ECF 89, p. 1-2.

25 Ignoring the ruling of the Magistrate Judge, Defendants now move this Court to
26 exclude evidence as to the use of funds by the Trust on the basis that Plaintiff "refused to
27 submit to discovery." ECF 141, p. 4. Defendants contend that Plaintiff should be barred
28 from presenting evidence that the purpose of the Trust is to "buy children in need musical

Clearly absent from Defendants' motion is the order issued by the Magistrate Judge holding the discovery in question (the same one Defendants now contend provide the basis for the exclusion) was "overbroad" and "[dis]proportional to the needs of the case." ECF 89, p. 1-2. As evidenced by the Magistrate Judge's Order, Plaintiff's position was not unreasonable. Thus, Defendants' contention that Plaintiff's purported "refusal to submit to discovery" warrants the requested exclusion is simply baseless.

On the internet and in the press, there has been some public criticism based on the assumption that this suit is motivated by selfish family members and former band members who are just trying to extort money from Led Zeppelin. Randy's sisters and former band members will indeed testify in the trial, but not one of them has any financial interest in the outcome of this case. The jury may be tempted to assume – as some members of the public have assumed – that they have a pecuniary interest in the case and that is the sole reason they brought the case. These could impact their credibility. To be fair to the Plaintiff and the witnesses, and so there is no juror confusion, it must be disclosed who is and who is not a beneficiary of the Trust. This is especially true since it is anticipated that Defendants will indeed, at trial, seek to disparage the Trust and establish it is not a proper Plaintiff.

1 – just as they did in their summary judgment motion – that Randy was “fine” with Led
2 Zeppelin using *Taurus* and this suit goes against his wishes and is solely motivated by
3 Randy’s family members pecuniary interests. Plaintiff should be entitled to defend
4 against these false theories and present evidence to rebut Defendants’ affirmative
5 defenses.

6 For these reasons, the motion should be denied.

7
8 Dated: April 15, 2016

FRANCIS ALEXANDER, LLC

9
10 /s/ Francis Alexander Malofiy
11 Francis Alexander Malofiy, Esq.
12 Attorney for Plaintiff
13
14
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16
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19
20
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23
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25
26
27
28

CERTIFICATE OF SERVICE

Plaintiff hereby represents that Plaintiff's Response to Defendants' MIL No. 8 has been served upon counsel by electronic filing:

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Attorney for Defendants Super Hype Publishing, Inc., Warner Music Group Corp., Warner/Chappell Music, Inc., Atlantic Recording Corporation, and Rhino Entertainment Company

*Respectfully submitted,
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/d/ April 15, 2016

Tab 20

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PLANT and JOHN PAUL JONES

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MICHAEL SKIDMORE, <i>etc.</i>,	)	Case No. 2:15-cv-03462 RGK (AGRx)
)	
Plaintiff,)	
)	
vs.	)	DEFENDANTS' NOTICE OF
	)	MOTION AND MOTION <i>IN</i>
	)	<i>LIMINE</i> NO. 8 TO EXCLUDE
LED ZEPPELIN, <i>et al.</i>,	)	EVIDENCE AND ARGUMENT AS
	)	TO TRUST'S USE OF FUNDS;
Defendants.	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES AND
	)	DECLARATION IN SUPPORT

Date: May 10, 2016
Time: 9:00 a.m.

Courtroom of the Honorable
R. Gary Klausner
United States District Judge

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 10, 2016, at 9:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 850 of the above-entitled District Court, located at 255 East Temple Street, Los Angeles, California, defendants James Patrick Page, Robert Anthony Plant, John Paul Jones, Warner/Chappell Music, Inc., Super Hype Publishing, Inc., Atlantic Recording Corporation, Rhino Entertainment Company and Warner Music Group Inc., will move the above-entitled Court, the Honorable R. Gary Klausner, United States District Judge presiding, for an Order excluding all evidence and argument as to plaintiff's and the Randy Craig Wolfe Trust's use of funds and any recovery in this action.

This Motion is brought on the grounds that, as stated more fully in the accompanying Memorandum of Points and Authorities, plaintiff's and the Randy Craig Wolfe Trust's use of funds and any recovery in this action is irrelevant, inadmissible and precluded because plaintiff refused to submit to discovery as to plaintiff's use of the Trust's funds, and testimony and argument as to the Trust's use of funds and any recovery also would confuse issues, mislead the jury, prejudice defendants and result in undue delay and wasted trial time.

This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities filed with this Notice of Motion and Motion, the pleadings and papers on file in this action, the matters of which this Court may take judicial notice, and such additional matters and oral argument as may be offered in support of the Motion.

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1 The Motions are made following the conference with plaintiff's counsel
2 pursuant to Local Rule 7-3, which took place on March 22, 2016.

3 Dated: March 25, 2016

/s/ Peter J. Anderson
Peter J. Anderson, Esq.
LAW OFFICES OF PETER J. ANDERSON
A Professional Corporation
Attorney for Defendants
JAMES PATRICK PAGE, ROBERT
ANTHONY PLANT, JOHN PAUL JONES,
WARNER/CHAPPELL MUSIC, INC.,
SUPER HYPE PUBLISHING, INC.,
ATLANTIC RECORDING CORP., RHINO
ENTERTAINMENT COMPANY and
WARNER MUSIC GROUP CORP.

Helene M. Freeman, Esq.
PHILLIPS NIZER LLP
Attorney for Defendants
JAMES PATRICK PAGE,
ROBERT ANTHONY PLANT and
JOHN PAUL JONES

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

3 Plaintiff sues as the claimed trustee of the Randy Craig Wolfe Trust, which
4 plaintiff alleges uses its funds to “buy children in need musical instruments” and will
5 use any recovery in this action for that purpose. FAC (Doc. 31) at 4 n. 1 & at 12, ¶
6 63. Plaintiff, however, refused to comply with discovery as to the Trust’s use of its
7 funds and refused to even state whether, as required by the trust documents he
8 produced, the Trust is qualified under federal income tax law as a charitable
9 organization. Not only is testimony and argument as to matters he withheld from
10 discovery properly precluded, but this testimony and argument is not relevant and
11 highly prejudicial.

12 Accordingly, testimony and argument as to plaintiff’s claimed use of its funds
13 and planned use of any recovery should be excluded.

14 **2. EVIDENCE AND ARGUMENT AS TO THE TRUST’S USE OF**
15 **FUNDS, INCLUDING ANY RECOVERY, SHOULD BE EXCLUDED**

16 **(a) Plaintiff Successfully Blocked Discovery into His Alleged Use of**
17 **Trust Funds**

18 Plaintiff, in his verified Complaint and First Amended Complaint, stated
19 under oath that he uses the Trust’s funds to buy instruments for needy children and
20 would use any recovery in this action for that purpose. Plaintiff also produced what
21 he contends are the 2002 Court Order that created the Trust, the Trust Agreement
22 and the Amendments to it, including a Fifth last Amendment dated May 13, 2008
23 and which requires that the Trust become qualified under federal income tax law as a
24 charitable organization and use its receipts to provide musical instruments to school
25 children. *See*, Joint Stip. *re* Def. Motion to Compel (Doc. 86-1) at 1:17-22 & 4:4-
26 10, & Appln. to Seal (Doc. 84) at Exh. 1 (under seal).

27 Accordingly, defendants served discovery as to plaintiff’s use of the Trust’s
28 funds and as to whether the Trust did in fact become qualified under federal income

1 tax law as a charitable organization. Joint Stip. *re* Def. Motion to Compel at 1-2, 2-
2 3, 8, 11. Plaintiff, however, refused to comply with that discovery, even subject to
3 the Protective Order in this case, and the Magistrate Judge declined to require
4 compliance. Order (Doc. 89). At his deposition, plaintiff refused to testify beyond
5 general assertions as to the use of Trust funds and refused outright to say whether
6 the Trust is in fact a charitable organization as required by the Fifth Trust
7 Amendment. Anderson Decl. at 8, ¶ 3, & 1.

8 Because plaintiff refused to submit to discovery as to the Trust's use of its
9 funds and whether it is a charitable organization, plaintiff is properly precluded from
10 offering testimony and argument as to the Trust's supposed use of its funds for
11 charitable purposes.

12 The Court has "inherent powers that are 'governed not by rule or statute but
13 by the control necessarily vested in courts to manage their own affairs so as to
14 achieve the orderly and expeditious disposition of cases.'" *Lewis v. Tel. Employees*
15 *Credit Union*, 87 F.3d 1537, 1557 (9th Cir. 1996), *quoting Unigard Sec. Ins. Co. v.*
16 *Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir. 1992). These inherent
17 powers include "the broad discretion to make discovery and evidentiary rulings
18 conducive to the conduct of a fair and orderly trial" and "the power to exclude
19 testimony of witnesses whose use at trial is in bad faith or would unfairly prejudice
20 an opposing party." *Lewis*, 87 F.3d at 1557, *quoting Unigard*, 982 F.2d at 368.

21 Allowing plaintiff to testify as to matters he specifically and successfully
22 withheld from discovery would be contrary to "a fair and orderly trial" and "would
23 unfairly prejudice [the] opposing part[ies]." *Id.* Moreover, it appears likely that his
24 refusal to permit discovery while providing only self-serving generalities is in bad
25 faith: his refusal to allow discovery even though he raised the issues himself,
26 strongly suggests that the truth is the Trust's funds are not in fact used as he
27 represents and that the Trust is not a charitable organization as required by the Fifth

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1 Amendment to the Trust Agreement. Otherwise, there was no reason for plaintiff to
2 resist so strenuously discovery as to his claimed use of Trust funds.

3 Accordingly, plaintiff should be precluded from offering testimony or
4 argument as to the claimed use of Trust funds and planned use of any recovery.

5 (b) **Plaintiff's Claimed Use of Trust Funds and Plan for Using any**
6 **Recovery to Buy Instruments for Needy Children are Not Relevant**

7 Neither are plaintiff's claimed but unproven use of Trust funds for charitable
8 purposes and his planned use of any recovery for charitable purposes, relevant to his
9 claims.

10 Plaintiff's past or future use of Trust funds is not an element, or relevant to an
11 element, of his claims for copyright infringement. *Feist Publns, Inc. v. Rural Tel.*
12 *Serv. Co.*, 499 U.S. 340, 361 (1991) ("To establish infringement, two elements must
13 be proven: (1) ownership of a valid copyright, and (2) copying of constituent
14 elements of the work that are original"). He also alleges a count for "Right of
15 Attribution – Equitable Relief – Falsification of Rock n' Roll History," but that is
16 not a recognized claim¹ and, in any event, he does not include the Trust's use of
17 funds as a supposed element of that claim. FAC (Doc. 31) at 29-30, ¶¶ 196-202. If
18 plaintiff's use of Trust funds is relevant at all, it is relevant to defendants' ability to
19 impeach plaintiff's sworn statements in his pleadings and relevant to defendants'
20 defenses, such as unclean hands. But, plaintiff has kept this evidence from
21 defendants. *See, above* at 3-4.

22 Accordingly, testimony and argument as to the Trust's use of its funds,
23 including any recovery in this action, should be excluded as not relevant.

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26 ¹ *UMG Recordings, Inc. v. Disco Azteca Distrib., Inc.*, 446 F. Supp. 2d 1164,
27 1178 (E.D. Cal. 2006) ("it is well established that the right to attribution is not a
28 protected right under the Copyright Act"); *Sybersound Records, Inc. v. UAV Corp.*,
517 F.3d 1137, 1144 (9th Cir. 2008) (misstating credit is not actionable).

(c) **Evidence and Argument that Plaintiff Uses and Will Use Trust Funds for Charitable Purposes Is also Properly Excluded Under Federal Rule of Evidence 403**

Testimony and argument as to plaintiff's past use of Trust funds for charitable purposes and plaintiff's supposed plan to use any recovery for charitable purposes, has no probative value and any probative value is substantially outweighed by the danger of undue prejudice. Fed. R. Evid. 403; *United States v. McFall*, 558 F.3d 951, 963-64 (9th Cir. 2009).

Plaintiff's unproven assertions that he uses Trust funds for the charitable purpose of buying musical instruments for needy children, and will use any recovery for that purpose, are not relevant and have zero probative value in this case.

On the other hand, plaintiff seeks to prejudice the jury by contrasting plaintiff, supposedly dedicated to charitable use of funds – which uses he refuses to document, even subject to the Protective Order in this case – against corporate defendants and well-known musical artists and songwriters, and falsely suggest to the jury that the jury would simply be transferring money to a charitable organization. Not only would that testimony and argument unfairly prejudice defendants, but it will confuse the issues, mislead the jury and waste trial time and delay the case.

For these additional reasons, testimony and argument as to the Trust's use of its funds and any recovery in this action should be excluded under Rule 403.

3. CONCLUSION

Testimony and argument as to plaintiff's use of the Trust's funds, including any recovery in this action, is properly precluded because plaintiff refused discovery

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on the issues, also is not relevant and, in addition, is unduly prejudicial, and should be excluded.

Dated: March 25, 2016

/s/ Peter J. Anderson
Peter J. Anderson, Esq.
LAW OFFICES OF PETER J. ANDERSON
A Professional Corporation
Attorney for Defendants
JAMES PATRICK PAGE, ROBERT
ANTHONY PLANT, JOHN PAUL JONES,
WARNER/CHAPPELL MUSIC, INC.,
SUPER HYPE PUBLISHING, INC.,
ATLANTIC RECORDING CORP., RHINO
ENTERTAINMENT COMPANY and
WARNER MUSIC GROUP CORP.

Helene M. Freeman, Esq.
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Attorney for Defendants
JAMES PATRICK PAGE,
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JOHN PAUL JONES

Tab 21

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 ENTERTAINMENT COMPANY and WARNER
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 Attorneys for Defendants
 13 JAMES PATRICK PAGE, ROBERT ANTHONY
 PLANT and JOHN PAUL JONES
 14

15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**
 17 **WESTERN DIVISION**

18	MICHAEL SKIDMORE, <i>etc.</i>,	)	Case No. 2:15-cv-03462 RGK (AGRx)
19	Plaintiff,)	
20	vs.	)	DECLARATION OF PETER J.
21	LED ZEPPELIN, <i>et al.</i>,	)	ANDERSON IN SUPPORT OF
22	Defendants.	)	MOTION FOR SUMMARY
23		)	JUDGMENT OR, IN THE
		)	ALTERNATIVE, PARTIAL
		)	SUMMARY JUDGMENT
)	
		)	Date: March 28, 2016
		)	Time: 9:00 a.m.

24
 25 Courtroom of the Honorable
 R. Gary Klausner
 26 United States District Judge
 27
 28

DECLARATION OF PETER J. ANDERSON

I, Peter J. Anderson, declare and state:

1. I am an attorney admitted to practice before this Court and all Courts of the State of California. I have personal knowledge of the following facts and could competently testify to these facts if called upon to do so.

2. I represent defendants Warner/Chappell Music, Inc., Syperhype Publishing, Inc., Atlantic Recording Corp., Rhino Entertainment Company, James Patrick Page, Robert Plant and John Paul Jones in this action. This Declaration is submitted in support of their Motion for Summary Judgment or, in the alternative, Partial Summary Judgment.

3. I took the deposition of Jay A. Ferguson on January 13, 2016, in this action. Mr. Ferguson provided corrections to the transcript of his deposition. Attached to this Declaration as Exhibit 8 are true and correct copies of pages from the transcript of Mr. Ferguson's deposition and which contain the testimony cited in support of defendants' Motion.

4. I took the deposition of Mark Christopher Andes on January 15, 2016, in this action. Mr. Andes has not provided corrections to the transcript of his deposition. Attached to this Declaration as Exhibit 9 are true and correct copies of pages from the transcript of Mr. Andes' deposition and which contain the testimony cited in support of defendants' Motion.

5. Attached to this Declaration as Exhibit 10 is a true and correct copy of deposition exhibit 347 in this action.

6. Attached to this Declaration as Exhibit 11 is a true and correct copy of the August 29, 1967 Exclusive Songwriter Agreement produced by plaintiff in this action.

7. I am familiar with the documents produced by plaintiff in this action and the deposition testimony in this action, and plaintiff has not produced any

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1 19. No evidence has been produced in this action that *Taurus* was played
2 on the radio, let alone that it was played on the radio prior to the 1971 release of the
3 album *Led Zeppelin IV*, which includes *Stairway to Heaven*.

4 20. No evidence has been produced in this action as to the extent of sales or
5 other distribution of the first Spirit album prior to the 1971 release of the album *Led*
6 *Zeppelin IV*.

7 21. Attached to this Declaration as Exhibit 20 is a true and correct copy of
8 deposition exhibit 352 in this action.

9 22. Plaintiff produced in this action a multiple-page listing of dates and
10 venues where plaintiff contends Spirit performed live from February 5, 1967 to
11 December 31, 1971, and plaintiff claims to have designated that listing as
12 “CONFIDENTIAL” under the Stipulated Protective Order in this action. I have
13 reviewed it carefully and count at least 175 listed Spirit performances that plaintiff
14 contends occurred from December 1968 through December 1971.

15 23. Attached to this Declaration as Exhibit 21 is a true and correct copy of
16 deposition exhibits 306 to 312 in this action, without the CDs that are photocopied in
17 the exhibits.

18 24. No evidence has been produced in this action that Led Zeppelin’s
19 members were present at the Santa Monica, California, Civic Auditorium or the
20 Anaheim, California, Convention Center when Spirit performed.

21 25. No evidence has been produced in this action that prior to December
22 26, 1968, Led Zeppelin and Spirit ever performed at the same venue on the same
23 day.

24 26. Attached to this Declaration as Exhibit 22 is a true and correct copy of
25 deposition exhibit 320 in this action.

26 27. Attached to this Declaration as Exhibit 23 is a true and correct copy of
27 deposition exhibit 313 in this action.

28 ///

1 28. Attached to this Declaration as Exhibit 24 is a true and correct copy of
2 deposition exhibit 317 in this action.

3 29. Attached to this Declaration as Exhibit 25 is a true and correct copy of
4 excerpts from volume 2 of the book, *Atlantic Records, A Discography*, and which,
5 by reference to the dated recording sessions preceding and following it, indicates
6 that the recording of the album *Cartoone* occurred in early December 1968.

7 30. No evidence has been produced in this action that Randy Wolfe,
8 professionally known as Randy California, ever sued over the alleged copying of
9 *Taurus* in *Stairway to Heaven*.

10 31. No evidence has been produced in this action that Bernice Pearl,
11 individually or on behalf of The Randy Craig Wolfe Trust, ever sued over the
12 alleged copying of *Taurus* in *Stairway to Heaven*.

13 32. At three minutes to midnight, Pacific Time, on February 10, 2014,
14 plaintiff's counsel e-mailed to me and other counsel plaintiff's initial expert
15 disclosures, including the report of his musicologist, Alexander Stewart. A true and
16 correct copy of that Report, without its exhibits and attachments, is attached as
17 Exhibit 2 to the accompanying Declaration of Dr. Lawrence Ferrara.

18 33. Neither Alexander Stewart's nor any other expert report submitted by
19 plaintiff, mentions the musical transcription of *Taurus* that would have accompanied
20 Hollenbeck Music's 1967 application to register a copyright in the *Taurus* musical
21 composition.

22 34. Neither Alexander Stewart's report nor any other expert report
23 submitted by plaintiff, is based upon the musical transcription of *Taurus* that would
24 have accompanied Hollenbeck Music's 1967 application to register a copyright in
25 the *Taurus* musical composition.

26 35. I attended the February 4, 2015 hearing in this action on defendants'
27 motion to dismiss or transfer, before this action was transferred to this Court.
28 Attached to this Declaration as Exhibit 26 are true and correct copies of pages from

1 the Reporter's Transcript of that hearing and which are cited in support of
2 defendants' Motion.

3 36. In the course of this action, I have produced to plaintiff's counsel
4 documents, designated as confidential under the Protective Order in this case,
5 establishing that in 2012-14 and at substantial cost, Rhino Entertainment Co., with
6 the assistance of other defendants, arranged for the remastering and re-release of Led
7 Zeppelin recordings, including the *Led Zeppelin IV* album and *Stairway to Heaven*,
8 and plaintiff's counsel has not disputed the foregoing.

9 37. No evidence has been produced in this action that John Paul Jones,
10 Super Hype Publishing, Inc., or Warner Music Group Corp. performed or distributed
11 *Stairway to Heaven* within the three years preceding plaintiff's filing of this action,
12 if at all.

13 I declare under penalty of perjury that the foregoing is true and correct.
14 Executed on February 25, 2016.

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16 /s/ Peter J. Anderson
17 PETER J. ANDERSON
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EXHIBIT 20

RETURN WITH ME NOW TO THOSE THRILLING DAYS OF YESTERDAY.....
TO THE FEBRUARY 1, 1969 PRE- "GROUNDHOG DAY" EXTRAVAGANZA
IN DETROIT, AS **SPIRIT** PLAYS THE LEGENDARY "GRANDE BALLROOM"!!!
(OPENING ACT: JETHRO TULL)

WHILE THE IMAGES AND SOUND MAY BE SUBSTANDARD, I HOPE THE
GOOD MEMORIES WILL MORE THAN MAKE UP FOR IT!!

THE SET LIST

1. FOG (2:50)
2. ALL THE SAME (5:04)
3. FRESH GARBAGE (4:37)
4. APPLE ORCHARD (3:39)
5. MECHANICAL WORLD (6:11) (CUT)
6. AREN'T YOU GLAD (2:59) (CUT)
NOTE: FROM INFERIOR SOURCE TO REST
7. UNCLE JACK (3:00)
8. NEW DOPE IN TOWN (2:46)
9. IT SHALL BE (3:17)
10. POOR RICHARD (2:07)
11. DARLIN' IF (4:59)
12. I GOT A LINE ON YOU (1:42) (CUT)
13. ELIJAH (22:22) (CUT)
- TOTAL (65:42)

BROUGHT TO YOU IN LIVING MONO BY BRUCE PATES "PRODUCTIONS"!!
HAPPY HOLIDAYS!!!!

EXHIBIT 20
226

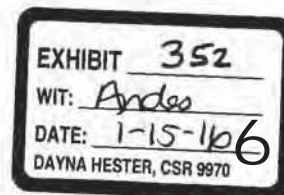


EXHIBIT 21

SPIRIT

"THE FORUM"

LOS ANGELES, CA

December 12, 1970

Opening for THE
MOODY BLUES

SPIRIT

1. NATURE'S WAY
2. IT'S ALL THE SAME
3. FRESH GARBAGE
4. PRELUDE: NOTHING TO HIDE
5. MR. SKIN
6. STREET WORM
7. FOG/DRUM SOLO
8. MECHANICAL WORLD
9. I GOT A LINE ON YOU

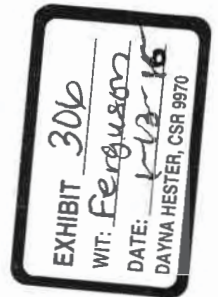


EXHIBIT 21
227

SPIRIT

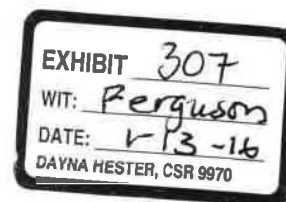
"MAMMOTH GARDENS"

DENVER, CO

JUNE 5 OR 6, 1970

SPIRIT

1. THE DECISION (?)
2. SWEET STELLA BABY
3. 1984
4. IT'S ALL THE SAME
5. FRESH GARBAGE
6. UNKNOWN INSTRUMENTAL
7. JEALOUS
8. IT SHALL BE
9. POOR RICHARD
10. GROUNDHOG (CUT)



SPIRIT

UNKNOWN VENUE

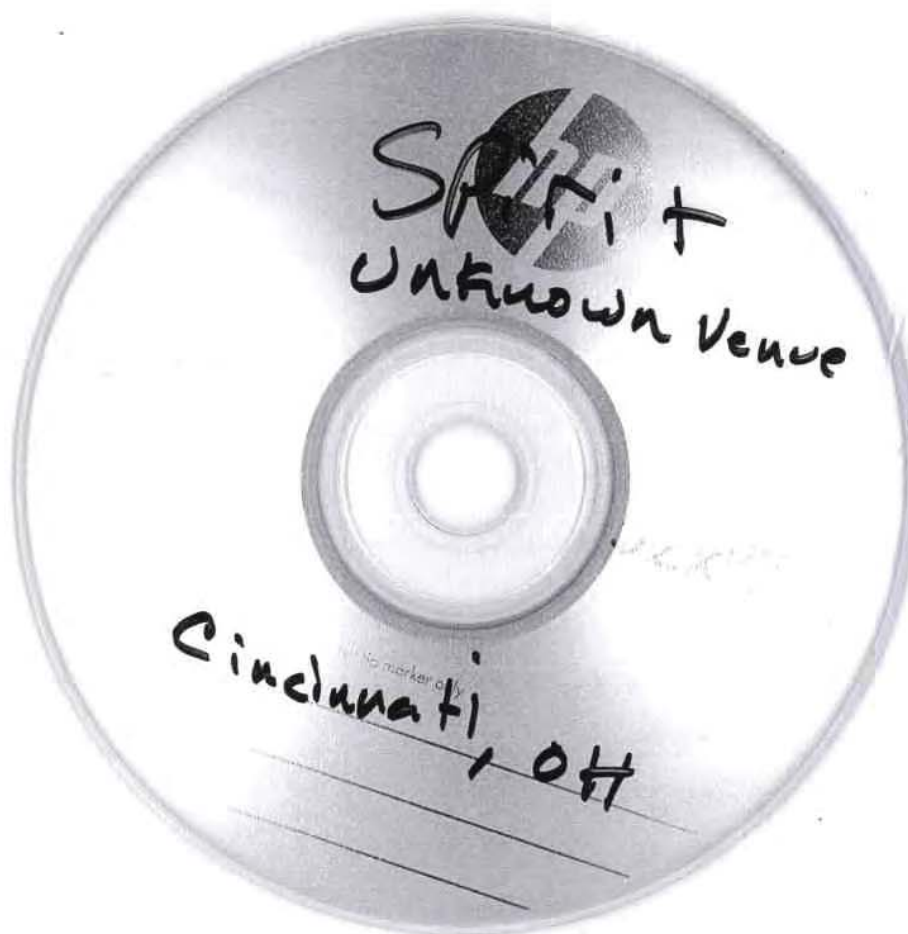
CINCINNATI, OH

LATE 1970

OPENING FOR ??

SPIRIT

1. PRELUDE: NOTHING TO HIDE
2. MR. SKIN
3. IT'S ALL THE SAME
4. FRESH GARBAGE
5. STREET WORM
6. FOG/ DRUM SOLO
7. MECHANICAL WORLD
8. I GOT A LINE ON YOU



SPIRIT

"WHISKY A GO GO"

HOLLYWOOD, CA

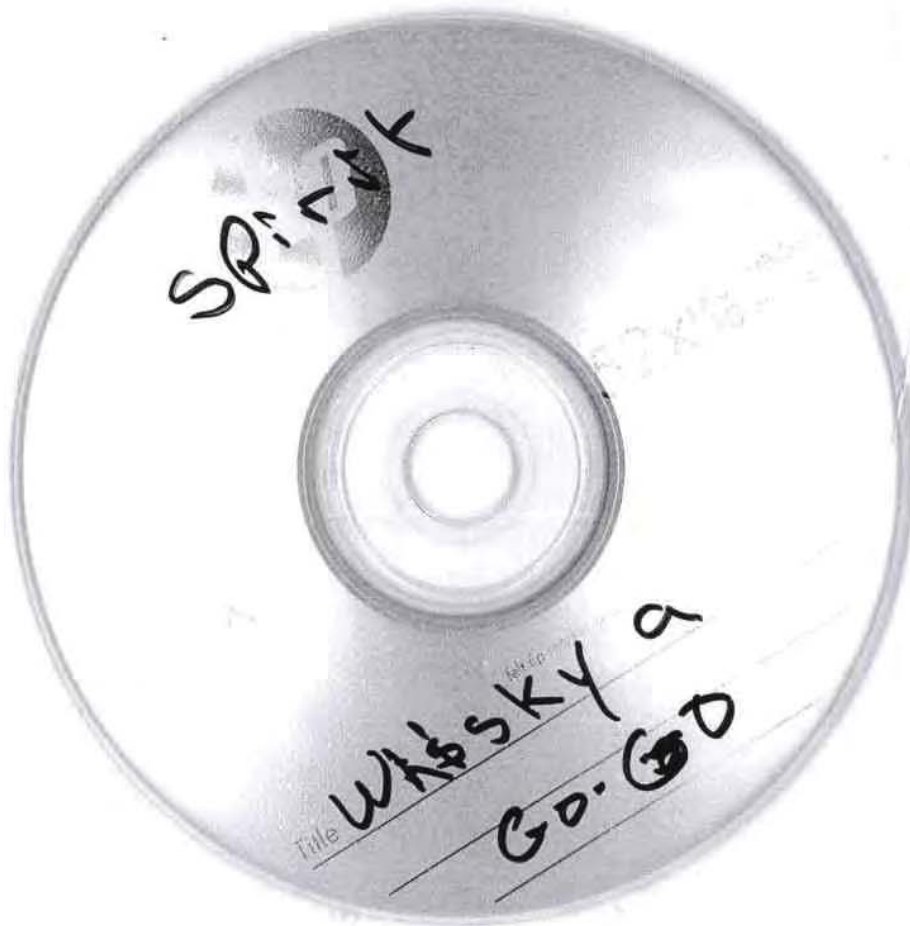
OCT. 31 OR

NOV. 1 OR 2, 1968

SPIRIT

1. IT'S ALL THE SAME
2. FRESH GARBAGE
3. NEW DOPE IN TOWN
4. APPLE ORCHARD
5. WATER WOMAN
6. TUNJI

EXHIBIT	<u>309</u>
WIT:	<u>Ferguson</u>
DATE:	<u>1-13-16</u>
DAYNA HESTER, CSR 9970	



SPIRIT

"GRANDE BALLROOM"

DETROIT, MI

FEB. 1, 1969

SPIRIT

1. FOG (2:50)
2. ALL THE SAME (5:04)
3. FRESH GARBAGE (4:37)
4. APPLE ORCHARD (3:39)
5. MECHANICAL WORLD (6:11) (CUT)
6. AREN'T YOU GLAD (2:59) (CUT)
7. UNCLE JACK (3:00)
8. NEW DOPE IN TOWN (2:46)
9. IT SHALL BE (3:17)
10. POOR RICHARD (2:07)
11. DARLIN' IF (4:59)
12. I GOT A LINE ON YOU (1:42) (CUT)
13. ELIJAH (22:22) (CUT)

TOTAL TIME (65:42)

EXHIBIT	310
WIT:	Ferguson
DATE:	1-13-16
DAYNA HESTER, CSR 9970	



EXHIBIT 21

231

635

SPIRIT

"CIVIC CENTER"

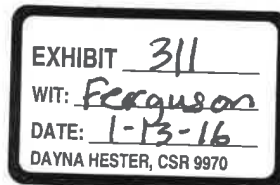
BALTIMORE, MD

OCTOBER 3, 1969

OPENING FOR
IRON BUTTERFLY

SPIRIT

1. IT'S ALL THE SAME
 2. FRESH GARBAGE
 3. JEALOUS
 4. GROUNDHOG (MOSTLY CUT)
 5. DARK EYED WOMAN (CUT)
 6. UNKNOWN SONG
SOUNDS LIKE EITHER JAY OR
RANDY INTRODUCES IT AS
SOMETHING THEY WROTE WITH
JOHN, BUT IT'S NOT UNDERSTANDABLE.
STARTS OUT LIKE A JOHN INST.,
THEN 1-2, IT'S GOES COUNTRY!
 7. MECHANICAL WORLD
 8. I GOT A LINE ON YOU (CUT)
- TRACK ONE - VOLUME RISES AT APPROX.
50 SEC., AND DROPS FOR 15 SEC. AT 4 MIN.



SPIRIT

"CENTER ARENA"

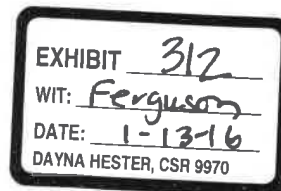
SEATTLE, WA

MAY 22, 1970

APPEARING IN THE MIDDLE SLOT
WITH STEPPENWOLF HEADLINING,
AND BLUES IMAGE OPENING.

SPIRIT

1. SWEET STELLA BABY
2. 1984
3. IT'S ALL THE SAME
4. FRESH GARBAGE
5. UNKNOWN INSTRUMENTAL
6. JEALOUS
7. IT SHALL BE
8. POOR RICHARD
9. MR. SKIN
10. POLICEMAN'S BALL
11. AREN'T YOU GLAD
12. DRUM SOLO
13. MECHANICAL WORLD
14. I GOT A LINE ON YOU



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

MICHAEL SKIDMORE	:	CIVIL ACTION
As Trustee for the	:	NO. 14-CV-3089
Randy Craig Wolfe Trust	:	
	:	
Plaintiff	:	
	:	
vs.	:	Philadelphia, Pennsylvania
	:	February 4, 2015
LED ZEPPELIN, et al.	:	
	:	
Defendants	:	ORAL ARGUMENTS HEARING

- - - - -

- - -

BEFORE THE HONORABLE JUAN R. SANCHEZ
UNITED STATES DISTRICT JUDGE

- - -

APPEARANCES:

For the Plaintiff:	FRANCIS MALOFIY, ESQUIRE FRANCIS ALEXANDER, LLC 280 North Providence Road Suite 105 Media, Pennsylvania 19063
For the Defendants:	PETER J. ANDERSON, ESQUIRE 100 Wilshire Blvd., Suite 2010 Santa Monica, California 90401 For Super Hype Publishing, Inc. HELENE M. FREEMAN, ESQUIRE PHILLIPS NIZER, LLP 666 Fifth Avenue New York, New York 10103 For James Patrick Page, Robert A. Plant and John P. Jones MATTHEW S. OLESH, ESQUIRE FOX ROTHSCHILD, LLP 2000 Market Street, 20th Floor Philadelphia, Pennsylvania 19103 For James Patrick Page

- - -

1 commercial purposes as far as advertisers and things like that.

2 And they've kept a close guard on the song, itself.

3 But there's multiple revenue streams, not just ticket
4 sales, CDs sales, tape sales, merchandising, even when it's
5 played on the radio, but there's all sorts of streams of
6 infringing time done, where -- ah --

7 THE COURT: But it seems to me, that most of -- you --
8 you keep throwing these infringing acts all relating to sales.
9 But I want to know, specifically, what is the song, the
10 performance, what in specific --

11 MR. MALOFIY: Well, I think as --

12 THE COURT: -- is the infringement act?

13 MR. MALOFIY: -- I think with this case, it's a
14 copyright case, so it's an issue of the authorship of the song,
15 itself. Here, a copyright determines ownership.

16 And I know there was some argument that, oh, whether or
17 not -- ah -- Mr. Randy C. Wolfe or his trust is -- is an owner.
18 He's by virtue of the Copyright Act, a beneficial owner and he's
19 intended to bring these causes of action. And that's a very
20 important point to not overlook, is that, because he is a
21 beneficial owner, he can bring these causes of action.

22 The fact that the song's composition was improperly
23 used -- as we alleged as plaintiff -- it means that, not only is
24 the sale of the CD infringing, but also the underlying
25 composition, because the underlying composition was used to

1 witness?

2 MR. MALOFIY: Paits would be a fact witness.

3 THE COURT: And what would he testify about?

4 MR. MALOFIY: About historical aspects of the band,
5 being there, collecting their history, knowing about what was
6 played, when was it played. Ah, what songs -- ah -- when things
7 were written. He was very much a part of the band all the way
8 through day one till today.

9 THE COURT: Why are the trust books and records in
10 Philadelphia?

11 MR. MALOFIY: Well, there's two reasons, they're both
12 in Philadelphia and in Massachusetts, because the trust is -- it
13 operates out of Massachusetts, it operates on the East Coast.

14 Because of that and because I also represent the trust,
15 I have, of course, had to go through, before filing the
16 complaint, all the trust documents to make sure that everything
17 is -- is -- is -- ah -- there's no issues with the trust and that
18 the claim could be validly brought as a beneficial owner.

19 THE COURT: Very well.

20 You argue that California law is irrelevant to this
21 action --

22 MR. MALOFIY: Yes.

23 THE COURT: -- copyright action.

24 They seem to be suggesting that because Randy Craig
25 Wolfe's claim of ownership of the copyright to "Taurus" depends

1 on the invalidity of the agreements, he signed with Hollenbeck
2 Music and/or Records, California may play some role in the case,
3 that seems to be their position.

4 My question is, if an issue is raised in this case as
5 to who owns the copyright to "Taurus", is that issue governed by
6 part of -- in part -- by California law and -- and if so,
7 explain?

8 MR. MALOFIY: No, I don't think so at all, it's all by
9 copyright law, ah, who owns the authorship of -- of "Taurus"
10 would be copyright law.

11 That the trust -- and it's undisputed that the trust is
12 the beneficial owner and has all of the copyrights, a hundred
13 percent of the copyrights, a hundred percent of all interests --
14 intellectual property -- of Randy Wolfe.

15 Here, an argument was made that, oh, because Hollenbeck
16 Music or -- ah -- Lou Adler is in California, that this is an
17 issue. I don't see this as an issue at all. It might change
18 plaintiff's damages in the end. And that would be worked out
19 between myself or plaintiff and also, Hollenbeck Music.

20 But to be fair, because Hollenbeck Music and Lou Adler
21 had an interest -- or have an interest -- in the song, because
22 they do, it gets split, the revenue, ah, because of that what I
23 had done as I was required to do by law, is cert -- send them a
24 certified mailing showing him the complaint, showing him the
25 allegations. And I wrote a letter to him, parsing out the

1 issues.

2 And I spoke to his associate, Howard Frank even before
3 the filing of the lawsuit. And I spoke to -- and I -- I
4 corresponded with his -- with him -- and his -- ah -- music
5 group.

6 And they have not claimed that there is any issue with
7 -- they have not claimed that Pennsylvania is in -- that it's
8 inconvenient. They have not claimed that even -- have not even
9 raised any motion, petition or filing with the Court as to the
10 complaint or any of the allegations in the complaint.

11 So, from the perspective of Hollenbeck Music and Lou
12 Adler, he's done nothing to address the complaint or even claimed
13 that this is an inconvenient forum or this is not a proper forum
14 or that the allegations are untrue or even as an -- having an
15 interest in the potential song -- or excuse me -- interest in the
16 song, "Taurus" and a potential interest in the song, Led Zeppelin
17 -- excuse me -- "Stairway to Heaven", he has not filed anything
18 with this Court.

19 So, the representations of counsel about, this issue is
20 really a non-issue, whatsoever. And it was an issue, it would
21 have been raised by that individual.

22 That's --

23 THE COURT: Very well.

24 MR. MALOFIY: -- that's the best way, I can address
25 that issue.

1 But no, it's not an issue here before us, whatsoever.
2 Plaintiff has full standing as a beneficial owner to bring this
3 claim. And absolutely, is the author of "Taurus" --

4 THE COURT: Right. If --

5 MR. MALOFIY: -- undisputed.

6 THE COURT: -- if I find personal jurisdiction in
7 lacking as to all defendants, does the plaintiff -- is the
8 plaintiff asking me to dismiss the case or transfer it as to all
9 defendants -- dismiss or transfer?

10 MR. MALOFIY: Ah, we would --

11 THE COURT: If I find personal --

12 MR. MALOFIY: -- we would ask -- we would ask two
13 things.

14 One is jurisdictional discovery, two would be, I think,
15 if the Court -- and this is, you know, I believe that clearly
16 plaintiff believes that there is jurisdiction here -- if the
17 Court finds -- finds differently, then it's plaintiff's position
18 that, well, California is definitely not the appropriate forum,
19 it would be New York --

20 THE COURT: All right.

21 MR. MALOFIY: -- because New York is closer to -- ah --
22 closer to Boston, Massachusetts, closer to the trustee. And it
23 wouldn't put the plaintiff out of litigation. But also it's the
24 headquarters of the defendants, where they've litigated before
25 and where they were -- where personal jurisdiction was found for

1 THE COURT: Thank you.

2 ESR OPERATOR: All rise.

3 (Adjourned in this matter at 3:46 p.m.)

4 * * *

I N D E X

<u>DEFENDANT</u>	<u>EXHIBITS</u>	<u>IDENTIFIED</u>	<u>EVIDENCE</u>
D-1	Jimmy Page Book	87	-
D-2	Led Zeppelin CDs	88	-

* * *

C E R T I F I C A T E

I do hereby certify that the foregoing is a correct transcript of the electronic-sound recording of the proceedings in the above-entitled matter.

Date: February 8, 2014

Gail Drummond
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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that at least one of the counsel for each participant in the case is a registered CM/ECF user.

Dated: June 2, 2017

/s/ Peter J. Anderson
PETER J. ANDERSON